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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHNSON & JOHNSON and JOHNSON &
JOHNSON CONSUMER COMPANIES, INC.,

Plaintiffs,

v.

THE AMERICAN NATIONAL RED CROSS,
LEARNING CURVE INTERNATIONAL, INC.,
MAGLA PRODUCTS, LLC, WATER-JEL
TECHNOLOGIES, INC., and FIRST AID
ONLY, INC.,

Defendants.

No. 07-CV-07061 (JSR)

**DECLARATION OF PHYLLIS S. WALLITT SUBMITTING EXHIBITS IN RESPONSE
TO DEFENDANTS' COUNTER-STATEMENT OF UNDISPUTED MATERIAL FACTS**

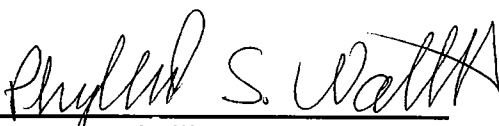
I, Phyllis S. Wallitt hereby declare, under penalty of perjury, that the following is true:

1. I am member of the bar of this Court and an associate at the firm of Patterson Belknap Webb & Tyler LLP, attorneys for Plaintiffs in this action. I respectfully submit this declaration in support of Plaintiffs' Response to Defendants' Counter-Statement of Undisputed Material Facts.

2. Attached hereto are true and correct copies of the exhibits identified in following table:

Exhibit No.	Description
134	Excerpt of Deposition of Richard Biribauer, Nov. 9, 2007
135	Photographs of Light Stick
136	Photograph of Survival Wrap
137	Photograph of Latex Gloves

New York, New York on December 12, 2007.



Phyllis S. Wallitt

Johnson & Johnson v. The American National Red Cross et al.
Case No. 07-CV-07061 (JSR)

EXHIBIT

134

1
2 UNITED STATES DISTRICT COURT
3 FOR THE SOUTHERN DISTRICT OF NEW YORK
4

JOHNSON & JOHNSON, et al.,)
5)
Plaintiffs,)
6)
vs.) Case No.
7) 07 CIV 7061
AMERICAN RED CROSS, et al.,)
8)
Defendants.)
9 -----)

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12
13 DEPOSITION OF RICHARD BIRIBAUER
14 New York, New York
15 Friday, November 9, 2007
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24 Reported by:
FRANCIS X. FREDERICK, CSR, RPR, RMR
25 JOB NO. 13958

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November 9, 2007

6

9:30 a.m.

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Deposition of RICHARD BIRIBAUER,

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held at the offices of Patterson Belknap

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Webb & Tyler, 1133 Avenue of the

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Americas, New York, New York, pursuant to

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Notice, before Francis X. Frederick, a

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Certified Shorthand Reporter, Registered

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Merit Reporter and Notary Public of the

16

States of New York and New Jersey.

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1 R. BIRIBAUER

2 Johnson & Johnson scripted across it, an
3 earlier version appeared -- was used in the
4 1800s as well.

5 Q. Do you know on what product the
6 version that you say was used in the 1800s
7 appeared?

8 A. No. I can't call to mind the
9 specific products.

10 Q. Do you know if it's on one of the
11 price lists that you have in your possession?

12 A. Yes, I believe it's on the price
13 list.

14 Q. So it's your testimony that a
15 version of the mark with the Greek red cross,
16 Johnson & Johnson scripted through it, has
17 been in use since the 1800?

18 A. Yes. I believe that to be true.

19 Q. Approximately what? 1880s, 1870s?

20 A. Well, the red cross symbol, the
21 red cross trademark, dates back to, based on
22 the historical record I've seen, 1879 I
23 believe.

24 Q. And is it your testimony the red
25 cross trademark which dates back to 1879

1 R. BIRIBAUER

2 covers this particular depiction of the red
3 cross emblem with Johnson & Johnson scripted
4 through it?

5 MS. SANCHEZ: Objection.

6 A. There's obviously graphically a
7 difference between the red cross mark as a
8 pure red cross and the red cross mark with
9 other matter added to it. And from a
10 trademark standpoint you would analyze it as
11 the genesis of their red cross mark and
12 differentiate it from the version with the
13 Johnson & Johnson scripted across it.

14 Q. And are you saying that the mark
15 from the 1870s or 1880s covers that particular
16 depiction of the red cross emblem?

17 A. No, I don't think it looks the
18 same.

19 MS. SANCHEZ: Wait, wait, wait.
20 Objection. Go ahead.

21 A. Okay.

22 Q. Does it have to look the same in
23 order to --

24 MS. SANCHEZ: Objection.

25 MR. METCALF: Can I finish my

1 R. BIRIBAUER

2 question?

3 MS. SANCHEZ: Yeah. I thought you
4 were done.

5 MR. METCALF: No.

6 DI Q. Does it have to look the same in
7 order for the 1870 or 1880 trademark to cover
8 that particular depiction?

9 MS. SANCHEZ: Now it sounds like
10 you're being asked to give trademark
11 legal advice. And I would direct you not
12 to answer the question.

13 A. I can describe the designs but I'm
14 not going to characterize it.

15 Q. Well, you see a distinct
16 difference in the way they appear, correct?

17 MS. SANCHEZ: Objection.

18 A. I mean, they are visually
19 distinguishable. If you showed me a red cross
20 and a red cross with something else I could
21 visually separate the two.

22 (Biribaum Exhibit 7, document
23 bearing production numbers JJAR 00001470
24 through JJAR 00001471, marked for
25 identification as of this date.)

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EXHIBIT
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JJAFC000072341

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To Activate:
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JJARC00072840

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EXHIBIT

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Johnson & Johnson
SURVIVAL WRAP

Uses:

- Helps prevent heat loss.
- Protects from direct sunlight exposure
- Reflects to warn oncoming traffic or signal rescuers

WARNING: Do not expose to direct flame. Do not nick or puncture. Do not use as tanning blanket or severe sunburn may result. Full body wrap in warm weather may cause overheating. Avoid contact with power sources or electrical devices.

CAUTION: Do not use for small children or infants. Suffocation hazard.

1 - 48" x 72" sheet

LOT 0667C

JJARC00072938

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EXHIBIT

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JJARRC000072939